

Human Services Board, Dixie Henry, Donelle Staley, and Steve Norman

Daniel Jerman, Hearing Officer

March 14, 1995

Fair Hearing No. 13,307

### INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her minor daughter coverage under medicaid for batteries to power an FM system hearing aid.<sup>(1)</sup> The issue is whether the Department's regulation denying such coverage is consistent with federal medicaid regulations.

### PROPOSED FINDINGS OF FACT

The facts are not in dispute.<sup>(2)</sup> The petitioner's two-year-old daughter has been diagnosed as having a severe sensori-neural hearing loss and has been prescribed an FM system hearing aid. The FM system is powered by batteries that last 10 to 14 days. Without the batteries the system is useless.

## RECOMMENDATION

The Department's decision should be reversed.

## REASONS

The state regulation, Medicaid Manual (MM) § M650, provides as follows:

Hearing aids and examinations for prescribing or fitting them are covered for Medicaid recipients under age 21. Batteries and other maintenance items are not covered. Repairs required by normal use of the hearing aid are covered. Replacement is limited to one every three years. Prior authorization is required for each hearing aid or hearing aid service. The Medicaid Division in Waterbury receives requests for prior authorization.

The issue in this case is whether the above prohibition on coverage for hearing aid batteries is consistent with federal regulations governing the medicaid program. A provision in the federal regulations, 42 C.F.R. § 440.110(c)(1), provides as follows:

"Services for individuals with speech, hearing, and language disorders" means diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician. It includes any necessary supplies and equipment.

Emphasis added.

The Department has not proffered any legal rationale or argument that batteries necessary to power a hearing aid are not "necessary supplies and equipment" within the meaning of the above regulation.<sup>(3)</sup> It is concluded that the prohibition in M.M. § M650, *supra*, on coverage for hearing aid batteries is in plain and stark conflict with 42 C.F.R. § 440.110(c)(1), *supra*.

In choosing to participate in a federal benefits program the Department cannot administer its program in conflict with federal regulations. See 33 V.S.A. § 1901, *King v. Smith*, 392 U.S. 309 (1968), and *In re Fowler*, 130 Vt. 176 (1972). Therefore, the Department's decision in this matter should be reversed.<sup>(4)</sup> 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

**THIS MATTER WILL BE CONSIDERED BY THE BOARD AT A MEETING IN MONTPELIER ON WEDNESDAY, MAY 3, 1995. THE MEETING WILL BE HELD AT THE HUMAN SERVICES BOARD'S OFFICE AT 118 STATE STREET, 2ND FLOOR, MONTPELIER, AND WILL BEGIN AT 9:30 A.M.**

1. The Department initially denied medicaid coverage for the FM system itself, but reversed its decision after the petitioner requested this fair hearing.
2. Copies of the petitioner's written legal arguments have been provided to members of the board.
3. The Department has advised the petitioner to apply for coverage or the hearing aid batteries under

"Part H", a supplementary federal program. However, as the petitioner points out in her brief (footnote 1, pp. 7-8) Part H is intended to cover services not covered under medicaid. Inasmuch as it is determined (infra) that the petitioner as a matter of law is entitled to coverage under medicaid, it is not necessary to address the issue of Part H coverage.

4. The petitioner also raises an issue (see petitioner's brief, pp. 11-13) regarding the alleged refusal by her providers to process her claim for medicaid coverage of the batteries, which she maintains precluded effective notice of her appeal rights. The hearing officer took no evidence on this issue and, therefore, deems it inappropriate at this time to order the Department to take specific corrective measures. However, assuming the petitioner's allegations are correct, the Department should inform providers that due process to recipients requires that all claims for medicaid coverage be submitted to the Department for individual decisions.